Government of Saskatchewan

Annual Report 2004-2005

Law Reform Commission of Saskatchewan

Saskatchewan Centennial 2005

Table of Contents

Letters of Transmittal 2

Objectives 3

The Commissioners and Staff 3

Financial Information 4

Research Program and Activities 5

Management's Responsibility for the Financial Statements 8

Where to Obtain Additional Information 8

Financial Statements 9

The Honourable Lynda Haverstock
Lieutenant Governor
Province of Saskatchewan

Your Honour:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the period April 1, 2004 to March 31, 2005.

Respectfully submitted,

Frank Quennell, Q.C.
Minister of Justice
and Attorney General

The Honourable Frank Quennell, Q.C.
Minister of Justice and Attorney General
Regina, Saskatchewan

Sir:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the period April 1, 2004 to March 31, 2005.

Respectfully submitted,

Merrilee Rasmussen, Q.C.
Chair

Objectives

The Law Reform Commission Act provides that:

> "The Commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law."

Topics for the Commission's research program are brought before meetings of the Commission for consideration. These topics may originate from a recommendation of the Minister of Justice, from the Commission and its staff, from the judiciary, from the legal profession, from other professional organizations, or from the public generally.

Once the research study in a particular project is completed, the matter is placed before the Commission for discussion and consideration. The Commission may decide to issue background papers or tentative proposals for circulation to the public in order to obtain criticism and comment prior to the preparation of a final report. This may entail public meetings, hearings and workshops. The Commission's recommendations are embodied in its final report to the Minister of Justice.

The Commission works closely with the Department of Justice in formulating research projects and facilitating adoption of its proposals. The Commission has also made an on-going contribution on behalf of the Province to the national work of the Uniform Law Conference of Canada. Commissioners and the Director of Research have served as members of the Conference for many years.

The Commission is a member of the Federation of Law Reform Agencies of Canada.

The Commissioners and Staff

The Law Reform Commission Act provides that the Minister of Justice shall appoint a Chair and not less than two other members of the Commission. Ms. Merrilee Rasmussen, Q.C., is Chair of the Commission. The other Commissioners for 2004-2005 are Kenneth P.R. Hodges, Q.C. (who was Chair from 1992-2000), Professor Michaela Keet of the College of Law, University of Saskatchewan, Mr. Alan McIntyre, a member of the Robertson Stromberg law firm in Regina, Ms Susan Amrud, Q.C., of the Saskatchewan Department of Justice, and Ms Bonnie Missens, a member of the Worme, Semaganis and Missens law firm in Saskatoon. In 2003, two lay commissioners were appointed to assist the Commission in its work by providing a non-legal perspective on the issues before it. The lay Commissioners are Ms Carole Lavallee of the Cowessess First Nation and Mr. Brian Evans, of Saskatoon. Unfortunately, Mr. Evans submitted his resignation in July 2004 because of his moving outside the province. Mr. Justice Laing, of the Saskatchewan Court of Queen's Bench, was also appointed as a Commissioner in 2003.

Mr. Michael Finley is Director of Research.

Previous members of the Commission are Professor Brian A. Grosman, Q.C. (Chair 1978-82), Professor R.C.C. Cuming, Q.C. (Chair 1978-82), Dr. D.A. Schmeiser, Q.C. (Chair 1982-87), Mr. Dale Linn, Q.C. (Chair 1987-92), Chief Justice E.D. Bayda (1974-76), Mr. George J.D. Taylor, Q.C. (1974-82), Madam Justice Marjorie A. Gerwing (1976-92), Mr. Gordon J. Kuski, Q.C. (1982-92), Madam Justice Gene Anne Smith (1992-98), Ms Gailmarie Anderson (1992-2001), Judge Dianne Morris (1992-2002) and Mr. Douglas Moen, Q.C. (2000-2002).

Financial Information

The Law Reform Commission is financed by the Province of Saskatchewan and the Law Foundation of Saskatchewan, and receives annual matching grants of $60,000.00 from each.

Commissioners receive honoraria from the Law Reform Commission of Saskatchewan based on the Order in Council by which they are appointed. The Chair receives $235 per day when engaged in work of the Commission and Commissioners receive $155 per day. The Director of Research is employed on a contractual basis at the rate of $70,000.00 per annum. Effective October 1, 2004, the Commission determined that the Chair should be engaged for the purpose of providing professional services, as are required, in addition to her duties as Chair of the Commission, in order to enhance the Commission's ability to produce and disseminate its reports and to liaise with individuals and organizations that are interested in the work of law reform. The Chair is paid an annual stipend of $10,000.00 to provide these services.

Inventory of Law Reform Issues

The Commission has compiled an inventory of law reform issues in Saskatchewan. The inventory process was designed to identify emerging trends in law and society as well as more discrete topics for law reform. Consultation with interested groups, individuals, and organizations focused on identification of issues and challenges, grouped about eight major themes:

- Democracy
- Aboriginal Peoples
- Human Rights
- Families and Children
- Vulnerable Adults
- Communities and the Environment
- Administrative Law and Procedure
- Technical Legal Issues

The inventory serves as a basis for the future work of the Commission. The Commission is also hopeful that it will assist legislators, researchers, and others interested in law reform to identify emerging needs of the justice system in Saskatchewan.

Current Research Program

Aboriginal Peoples

The Law Reform Commission of Saskatchewan has an interest in exploring the issues of Aboriginal self-government because of the significant Aboriginal population in this province and the need to find positive ways in which the Aboriginal and non-Aboriginal communities of Saskatchewan can live together harmoniously. To this end, the Saskatchewan Commission prepared a paper that was presented to the Uniform Law Conference of Canada at its meeting in Yellowknife in 2002, called, "The Role of the Uniform Law Conference in relation to Aboriginal Laws". The purpose of the paper was to stimulate thinking about the issues of harmonization of Aboriginal and non-Aboriginal laws.

The Law Reform Commission of Saskatchewan also completed a joint project with the Law Commission of Canada in 2003 in relation to the issue of Aboriginal self-government in Canada. The project was a theoretical paper developed by John Whyte, Q.C., a senior fellow of the Saskatchewan Institute of Public Policy and former Deputy Minister of Justice for Saskatchewan.

The Commission continues to work with the Saskatchewan Institute for Public Policy to investigate issues relating to Aboriginal self-government in a broad social and political context. Ian Peach, Director of the Institute, and Merrilee Rasmussen Q.C., Chair of the Commission prepared a joint paper to be presented at a conference called, "First Nations, First Thoughts" on May 5 and 6, 2005. The conference organizers provided notice that the paper was accepted in early March 2005. The delay in receiving word of acceptance resulted from the fact that the conference organizers were inundated with responses to their call for papers – over 500 abstracts were submitted and about 75 were selected to be presented at the conference.

The paper provides an analysis of the innovative provisions of the Saskatchewan Treaty Governance negotiations between Canada, Saskatchewan and First Nations that made it possible to consider a plan for a province-wide self-government framework. The key provisions were those that created a context for recognition of First Nations' own constitutions and membership codes, and, most importantly, a relationship of laws regime that would recognize that First Nation laws could, in appropriate circumstances, displace federal and provincial laws.

Human Rights

The Vulnerable Worker: The Law Commission of Canada has prepared a report that reviews this issue in terms of the federal government's legislative authority. The Commission has determined that it could usefully add to this discussion by reviewing the issues from a provincial perspective once the Law Commission has reported.

Handbook of Privacy Law and Legislation in Saskatchewan: The Commission is working together with the Saskatchewan Information and Privacy Commissioner to develop a handbook of privacy law from a Saskatchewan perspective.

Vulnerable Adults

Powers of Attorney: At the initiative of the Saskatchewan Law Reform Commission, representatives of law reform agencies in British Columbia, Alberta, Saskatchewan, and Manitoba have met to discuss joint projects. The first such joint project was initiated in 2003 in relation to enduring powers of attorney, and specifically facilitating recognition of the enduring power of attorney document, clarifying the duties of attorneys, and issues for persons interacting with attorneys. A joint consultation paper was approved by all western law reform agencies by March 31, 2004, and consultations in the four jurisdictions will occur during 2004-2005. It is anticipated that the four jurisdictions will produce a final report in 2005-2006.

Elder Law Topics: The British Columbia Law Institute has created an Institute for Elder Law Studies and has recently released several reports in relation to matters of concern affecting elderly members of our society. The Saskatchewan Commission has approved the preparation of project proposals in relation to the topics of loans and guarantees to family members and reverse mortgages. The work of the BCLI will be an extremely helpful foundation.

Communities and the Environment

Liability of Landowners to Recreational Users of Land: The preparation of a project proposal on this topic was authorized by the Commission in February 2005. It is anticipated that a consultation paper will be issued in 2005 and a final report adopted in early 2006.

Administrative Law and Procedure

The Commission's Administrative Law project responds to a perceived need for clear and accessible legislative guidance for the wide range of decision-making by boards and tribunals operating under provincial law.

The first phase of the project focuses on the concept of a model procedural code to guide the work of administrative tribunals established under Saskatchewan legislation. A consultation paper, *A Model Code of Procedure For Administrative Tribunals*, was issued in May, 2003 and can be found on the Commission's web site. The Commission has circulated the draft to interested individuals and organizations and has met with several groups and individuals as part of its consultation process. A final report will be issued in 2005.

Handbook of Professional Disciplinary Procedure: Draft for consultation
The Handbook is the second phase of the Commission's administrative law project and considers procedure before disciplinary committees and tribunals of self-governing professions regulated by Saskatchewan legislation. The Handbook is intended to be a practical guide to the procedure of investigation and discipline committees of professional organizations that have been given authority to discipline their members by statute. It is designed primarily for use by professional organizations that have not developed elaborate procedural rules unique to their needs. The Handbook is intended to make compliance with legal rules of procedure designed to protect the rights of parties to discipline proceeding less difficult for committee members who are not legally trained. Several professional associations have indicated an interest in the Commission's work in this regard.

A third phase will look at appeals from administrative tribunals.

Legal Issues

Wills and Estates: During the course of consultations with members of the Saskatchewan bar as part of the Commission's inventory of law reform issues, concern about several matters involving the law of wills and administration of estates were identified. The Commission issued its *Consultation Paper: Revocation of Wills* in October 2004. Under the present law, a will is automatically revoked on marriage or divorce. These long-standing rules are intended to protect the interests of spouses and children of the makers of wills. However, it has been suggested the changing social and legal context may sometimes defeat the purpose of the rules, and even make them a problem. This consultation paper discusses the issues.

The Commission issued its *Discussion Paper on the Consolidation of Certain Rules and Statutory Provisions in The Administration of Estates Act* in February 2005. This paper is part of the Commission's on-going review of the law of wills, trusts, and administration of estates. During the course of research on other topics, the Commission identified a number of statutory provisions that are virtually obsolete, or so obscure that their significance is now uncertain. This renders them even more obscure. The Commission has also identified certain related common law and equitable rules that should be clarified and modernized by revising and codifying them. A related project is looking at the Rules of Court relative to administration of estates, and the Commission is being guided by a committee of lawyers and judges with a particular interest in this area of the law.

Title Insurance: The Commission has embarked upon a Joint Project with the Manitoba Law Reform Commission on the issue of title insurance in a Torrens system of land title registration. A joint research paper has been prepared to form the basis of consultations in the two jurisdictions, which consultations will occur in 2005-2006. The Commission anticipates a report in 2006.

Fraudulent Conveyances and Preferences: The Commission is working with the Uniform Law Conference of Canada and its Commercial Law Strategy on a project to revise the law on Fraudulent Conveyances and Preferences. At present, this area of the law is principally governed by the *Fraudulent Conveyances, 1570*, a part of the English law received in Saskatchewan when the Northwest Territories, and later the province, were created.

Projects Completed 2004-2005

Report on Electronic Wills, October 2004

A will created on a computer and stored on computer media such as a CD-ROM or on a computer network rather than printed out and signed in the usual manner is probably invalid under Saskatchewan law at present. This paper discusses the issues and problems surrounding recognition of electronic wills. It concludes that the technology is now available to legislate a set of formalities for recognition of electronic wills, but recommends delaying doing so until there is sufficient interest in the legal profession and public to warrant doing so. In the mean time, the report recommends amendment of *The Wills Act* to make it clear that the courts can admit electronic wills to probate in the same manner as other formally deficient wills that "substantially comply" with the requirements of *The Wills Act*.

A complete list of all of the Commission's reports can be found on the Commission's website at www.lawreformcommission.sk.ca.

Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Law Reform Commission of Saskatchewan. Fulfilling this responsibility requires the preparation and presentation of financial statements and other financial information according to the recommendations of the Public Sector Accounting Board. These recommendations are consistently applied, with any exceptions specifically described in the financial statements.

The accounting systems used by the Commission include an appropriate system of internal controls to provide reasonable assurance that:

- transactions are authorized;
- the Commission's assets are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other information;
- the accounts are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other financial information.

To ensure management meets its responsibilities for financial reporting and internal control, the members of the Law Reform Commission of Saskatchewan discuss audit and reporting matters with representatives of management at regular meetings. The members of the Commission have also reviewed the financial statements with representatives of management.

The Provincial Auditor of Saskatchewan has audited the Law Reform Commission of Saskatchewan's statement of financial position as at March 31, 2005, and the related statements of operations and changes in net assets and cash flows for the year then ended. The Provincial Auditor's responsibility is to express an opinion on the fairness of management's financial statements. The Auditor's Report outlines the scope of the audit and the Provincial Auditor's opinion.

Merrilee Rasmussen, Q.C.
Chair
Regina, Saskatchewan
June, 2005

Where to Obtain More Information

Mr. Michael Finley is Director of Research and can be contacted at:

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LAW REFORM COMMISSION OF SASKATCHEWAN

FINANCIAL STATEMENTS

For the Year Ended March 31, 2005

Provincial Auditor Saskatchewan

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1920 Broad Street
Regina, Saskatchewan
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SASKATCHEWAN

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AUDITOR'S REPORT

To the Members of the Legislative Assembly of Saskatchewan

I have audited the statement of financial position of the Law Reform Commission of Saskatchewan as at March 31, 2005, and the statements of changes in net assets, operations, and cash flows for the year then ended. The Commission's management is responsible for preparing these financial statements for Treasury Board's approval. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2005 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina, Saskatchewan
July 12, 2005

Fred Wendel, CMA, CA
Provincial Auditor

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF FINANCIAL POSITION
As at March 31

	2005	2004
ASSETS		
Current		
Cash (Statement 4)	$ 108,460	$ 79,031
Account receivable	15,000	15,000
Prepaid expense	1,594	4,379
	125,054	98,410
Capital assets (Note 3)	516	1,032
Total Assets	$ 125,570	$ 99,442
LIABILITIES AND NET ASSETS		
Current Liabilities		
Accounts payable	$ 7,456	$ 7,839
Net Assets		
Net assets invested in capital assets	516	1,032
Unrestricted net assets	117,598	90,571
Total Net Assets (Statement 2)	118,114	91,603
Total Liabilities and Net Assets	$ 125,570	$ 99,442

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF CHANGES IN NET ASSETS
Year Ended March 31

	2005			2004
	Invested in Capital Assets	Unrestricted	Total	Total
Balance, beginning of year	$ 1,032	$ 90,571	$ 91,603	$ 56,719
Excess (deficiency) of revenue over expenses (Statement 3)	(516)	27,027	26,511	34,884
Balance, end of year	$ 516	$ 117,598	$ 118,114	$ 91,603

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF OPERATIONS
Year Ended March 31

	Budget	2005	2004
Revenues			
Saskatchewan Department of Justice grant	$ 60,000	$ 60,000	$ 60,000
Law Foundation grant (Note 5)	60,000	60,000	60,000
Law Commission of Canada grant	—	—	10,000
Interest	—	40	24
	120,000	120,040	130,024
Expenses			
Salaries and employee benefits	75,500	73,090	73,061
Commissioners' honoraria and expenses	24,000	5,540	5,245
Professional services	—	5,000	—
Conference expense	4,000	5,283	2,806
Rent	—	—	1,650
Office supplies and services	13,750	2,672	1,520
Printing	1,000	—	—
Professional fees	1,000	1,016	—
Amortization expense	—	516	684
Miscellaneous	—	412	10,174
	119,250	93,529	95,140
Excess of revenues over expenses	$ 750	$ 26,511	$ 34,884

(See accompanying notes to the financial statements)

Statement 4

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF CASH FLOWS
Year Ended March 31

	2005	2004
Cash flows from operating activities		
Saskatchewan Department of Justice grant	$ 60,000	$ 60,000
Law Foundation grant	60,000	60,000
Law Commission of Canada grant	—	10,000
Interest received	40	24
Payment of prepaid expenses	2,785	—
Cash paid to suppliers and employees	(93,396)	(99,261)
Increase in cash from operating activities	29,429	30,763
Cash flows from investing activities		
Purchase of capital assets	—	(1,548)
Net increase in cash	29,429	29,215
Cash, beginning of year	79,031	49,816
Cash, end of year	$ 108,460	$ 79,031

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
NOTES TO THE FINANCIAL STATEMENTS
March 31, 2005

1. Incorporation

The Law Reform Commission Act was amended effective November 6, 1987. At that date the Commission became a body corporate and continued the operations of the Law Reform Commission of Saskatchewan.

The purpose of the Commission is to review all the laws of the Province with a view to its systematic development and reform and generally the simplification and modernization of the law.

2. Significant Accounting Policies

These financial statements have been prepared in accordance with Canadian generally accepted accounting principles and include the following significant accounting policies:

a) Revenue Recognition
The Commission follows the deferral method of accounting and recognizes unrestricted contributions as revenue when received or receivable.

b) Capital Assets
Capital assets are recorded at cost. The capital assets are reduced annually for the consumed cost of the asset calculated upon the straight-line method. Currently, capital assets include computers, which have a useful life of three years.

3. Capital Assets

	Cost	Accumulated Amortization	Net Book Value 2005	Net Book Value 2004
Computer	$ 3,964	$ 3,448	$ 516	$ 1,032

4. Related Party Transactions

Included in these financial statements are transactions with various Saskatchewan Crown corporations, departments, agencies, boards and commissions related to the Law Reform Commission of Saskatchewan by virtue of common control or significant influence by the Government of Saskatchewan.

The Law Reform Commission purchased office supplies and services from Rasmussen Management Consulting Ltd., which is owned by the chairperson of the Commission.

The Law Reform Commission contracted the chairperson of the Commission to provide professional services, in addition to her duties as chairperson, for the period October 1, 2004 to September 30, 2005 for $10,000 per annum.

The following table summarizes the Commission's related party transactions that are in the normal course of operations. These transactions are recorded at the standard rates charged by these parties and are settled at normal trade terms.

	2005	2004
Operating revenues - Grant from Department of Justice	$ 60,000	$ 60,000
Operating expenditures		
University of Saskatchewan - miscellaneous	289	2,241
Rasmussen Management Consulting Ltd. - office supplies and services	1,835	765
Rasmussen, Merrilee, Q.C. - professional services	5,000	---

In addition, the Commission pays Provincial Sales Tax to the Saskatchewan Department of Finance on all its taxable purchases. Taxes paid are recorded as a part of the cost of those purchases.

5. Law Foundation Grant

The Law Reform Commission received a grant in 2004/05 from the Law Foundation of Saskatchewan for $60,000 (2004/05 – $60,000).

6. Financial Instruments

Financial instruments consist of account receivable and accounts payable. There are no significant terms and conditions related to the financial instruments that may affect the amount, timing and certainty of future cash flows. The fair value of these instruments approximates carrying value due to their immediate or short-term maturity.